

HOUSE BILL No. 1342

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-9-2-71.5; IC 31-30-1-4; IC 31-37; IC 35-38-2.5.

Synopsis: Juvenile home detention. Provides that if a juvenile court releases a juvenile to the juvenile's parent, guardian, or custodian after a detention hearing or as part of a disposition, the juvenile and the juvenile's parent, guardian, or custodian are subject to the conditions of juvenile home detention. Provides penalties for a parent, guardian, or custodian who does not immediately report any violation by the juvenile of the restrictions and rules of juvenile home detention of which the parent, guardian, or custodian is aware. Provides that a juvenile court does not have jurisdiction over an individual for an alleged violation constituting a felony or misdemeanor if the individual was at least ten years of age at the time of the alleged violation and has at least six prior unrelated misdemeanor or felony convictions or juvenile adjudications for acts that would constitute misdemeanors or felonies if committed by an adult.

Effective: July 1, 2009.

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January 13, 2009, read first time and referred to Committee on Courts and Criminal Code.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1342

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 31-9-2-71.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2009]: **Sec. 71.5. "Juvenile home detention" means home**
4 **detention for a juvenile ordered by a juvenile court under**
5 **IC 31-37-26.**

6 SECTION 2. IC 31-30-1-4, AS AMENDED BY P.L.67-2008,
7 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
8 JULY 1, 2009]: Sec. 4. (a) The juvenile court does not have jurisdiction
9 over an individual for an alleged violation of:

- 10 (1) IC 35-41-5-1(a) (attempted murder);
11 (2) IC 35-42-1-1 (murder);
12 (3) IC 35-42-3-2 (kidnapping);
13 (4) IC 35-42-4-1 (rape);
14 (5) IC 35-42-4-2 (criminal deviate conduct);
15 (6) IC 35-42-5-1 (robbery) if:
16 (A) the robbery was committed while armed with a deadly
17 weapon; or



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1 (B) the robbery results in bodily injury or serious bodily
 2 injury;
 3 (7) IC 35-42-5-2 (carjacking);
 4 (8) IC 35-45-9-3 (criminal gang activity);
 5 (9) IC 35-45-9-4 (criminal gang intimidation);
 6 (10) IC 35-47-2-1 (carrying a handgun without a license), if
 7 charged as a felony;
 8 (11) IC 35-47-10 (children and firearms), if charged as a felony;
 9 (12) IC 35-47-5-4.1 (dealing in a sawed-off shotgun); or
 10 (13) any offense that may be joined under IC 35-34-1-9(a)(2) with
 11 any crime listed in subdivisions (1) through (12);
 12 if the individual was at least sixteen (16) years of age at the time of the
 13 alleged violation.

14 (b) The juvenile court does not have jurisdiction for an alleged
 15 violation of manufacturing or dealing in cocaine or a narcotic drug
 16 (IC 35-48-4-1), dealing in methamphetamine (IC 35-48-4-1.1), dealing
 17 in a schedule I, II, or III controlled substance (IC 35-48-4-2), or dealing
 18 in a schedule IV controlled substance (IC 35-48-4-3), if:

- 19 (1) the individual has a prior unrelated conviction under
 20 IC 35-48-4-1, IC 35-48-4-1.1, IC 35-48-4-2, or IC 35-48-4-3; or
 21 (2) the individual has a prior unrelated juvenile adjudication that,
 22 if committed by an adult, would be a crime under IC 35-48-4-1,
 23 IC 35-48-4-1.1, IC 35-48-4-2, or IC 35-48-4-3;

24 and the individual was at least sixteen (16) years of age at the time of
 25 the alleged violation.

26 **(c) The juvenile court does not have jurisdiction over an**
 27 **individual for an alleged violation constituting a felony or**
 28 **misdemeanor if:**

- 29 **(1) the individual was at least ten (10) years of age at the time**
 30 **of the alleged violation; and**
 31 **(2) the individual has at least six (6) of any combination of the**
 32 **following:**

- 33 **(A) Prior unrelated misdemeanor or felony convictions.**
 34 **(B) Prior unrelated juvenile adjudications for acts that**
 35 **would constitute misdemeanors or felonies if committed by**
 36 **an adult.**

37 ~~(c)~~ **(d)** Once an individual described in subsection (a) or (b) has
 38 been charged with any crime listed in subsection (a) or (b), **or any**
 39 **alleged violation to which subsection (c) applies**, the court having
 40 adult criminal jurisdiction shall retain jurisdiction over the case even
 41 if the individual pleads guilty to or is convicted of a lesser included
 42 offense. A plea of guilty to or a conviction of a lesser included offense

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does not vest jurisdiction in the juvenile court.

SECTION 3. IC 31-37-6-6, AS AMENDED BY P.L.146-2008, SECTION 624, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. (a) The juvenile court shall release the child on the child's own recognizance or to the child's parent, guardian, or custodian upon the person's written promise to bring the child before the court at a time specified. However, the court may order the child detained if the court finds probable cause to believe the child is a delinquent child and that:

- (1) the child is unlikely to appear for subsequent proceedings;
- (2) detention is essential to protect the child or the community;
- (3) the parent, guardian, or custodian:
 - (A) cannot be located; or
 - (B) is unable or unwilling to take custody of the child;
- (4) return of the child to the child's home is or would be:
 - (A) contrary to the best interests and welfare of the child; and
 - (B) harmful to the safety or health of the child; or
- (5) the child has a reasonable basis for requesting that the child not be released.

However, the findings under this subsection are not required if the child is ordered to be detained in the home of the child's parent, guardian, or custodian or is released subject to any condition listed in subsection (d).

(b) If a child is detained for a reason specified in subsection (a)(3), (a)(4), or (a)(5), the child shall be detained under IC 31-37-7-1.

(c) If a child is detained for a reason specified in subsection (a)(4), the court shall make written findings and conclusions that include the following:

- (1) The factual basis for the finding specified in subsection (a)(4).
- (2) A description of the family services available and efforts made to provide family services before removal of the child.
- (3) The reasons why efforts made to provide family services did not prevent removal of the child.
- (4) Whether efforts made to prevent removal of the child were reasonable.

(d) Whenever the court releases a child under this section, the court:

(1) may impose conditions upon the child, including:

- ~~(1) home detention;~~
- ~~(2) (A) electronic monitoring;~~
- ~~(3) a curfew restriction;~~
- ~~(4) (B) a protective order;~~
- ~~(5) (C) a no contact order;~~

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- 1 ~~(6)~~ **(D)** an order to comply with Indiana law; or
 2 ~~(7)~~ **(E)** an order placing any other reasonable conditions on the
 3 child's actions or behavior; **and**
 4 **(2) shall impose upon the child:**
 5 **(A) juvenile home detention, as set forth in IC 31-37-26;**
 6 **and**
 7 **(B) curfew restrictions.**
 8 (e) If the juvenile court releases a child to the child's parent,
 9 guardian, or custodian under this section, the court:
 10 **(1)** may impose conditions on the child's parent, guardian, or
 11 custodian to ensure:
 12 ~~(1)~~ **(A)** the safety of the child's physical or mental health;
 13 ~~(2)~~ **(B)** the public's physical safety; or
 14 ~~(3)~~ **(C)** that any combination of subdivisions ~~(1)~~ **clauses (A)**
 15 and ~~(2)~~ **(B)** is satisfied; **and**
 16 **(2) shall impose conditions on the child's parent, guardian, or**
 17 **custodian as set forth in IC 31-37-26.**
 18 (f) The juvenile court shall include in any order approving or
 19 requiring detention of a child or approving temporary detention of a
 20 child taken into custody under IC 31-37-5 all findings and conclusions
 21 required under:
 22 (1) the applicable provisions of Title IV-E of the federal Social
 23 Security Act (42 U.S.C. 670 et seq.); or
 24 (2) any applicable federal regulation, including 45 CFR 1356.21;
 25 as a condition of eligibility of a delinquent child for assistance under
 26 Title IV-E or any other federal law.
 27 (g) Inclusion in a juvenile court order of language approved and
 28 recommended by the judicial conference of Indiana, in relation to:
 29 (1) removal from the child's home; or
 30 (2) detention;
 31 of a child who is alleged to be, or adjudicated as, a delinquent child
 32 constitutes compliance with subsection (f).
 33 SECTION 4. IC 31-37-11-2 IS AMENDED TO READ AS
 34 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) If:
 35 (1) a child is in detention; and
 36 (2) a petition has been filed;
 37 a fact-finding hearing or a waiver hearing must be commenced not later
 38 than twenty (20) days, excluding Saturdays, Sundays, and legal
 39 holidays, after the petition is filed.
 40 (b) If:
 41 (1) a child is not in detention; and
 42 (2) a petition has been filed;

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the hearing must be commenced not later than sixty (60) days, excluding Saturdays, Sundays, and legal holidays, after the petition is filed.

(c) A child who is ordered detained in the home of the child's parent, guardian, or custodian or who is subject to other conditions of release under IC 31-37-6-6 or **IC 31-37-26** may not be considered as being detained for purposes of this section.

SECTION 5. IC 31-37-19-1, AS AMENDED BY P.L.146-2008, SECTION 647, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) Subject to section 6.5 of this chapter, if a child is a delinquent child under IC 31-37-2, the juvenile court may enter one (1) or more of the following dispositional decrees:

(1) Order supervision of the child by the probation department **and, if the child will reside in the home of the child's parent, guardian, or custodian, order the child to be subject to juvenile home detention under IC 31-37-26.**

(2) Order the child to receive outpatient treatment:

(A) at a social service agency or a psychological, a psychiatric, a medical, or an educational facility; or

(B) from an individual practitioner.

(3) Remove the child from the child's home and place the child in another home or shelter care facility. Placement under this subdivision includes authorization to control and discipline the child.

(4) Award wardship to a:

(A) person, other than the department; or

(B) shelter care facility.

(5) Partially or completely emancipate the child under section 27 of this chapter.

(6) Order:

(A) the child; or

(B) the child's parent, guardian, or custodian;

to receive family services.

(7) Order a person who is a party to refrain from direct or indirect contact with the child.

(b) If the child is removed from the child's home and placed in a foster family home or another facility, the juvenile court shall:

(A) approve a permanency plan for the child;

(B) find whether or not reasonable efforts were made to prevent or eliminate the need for the removal;

(C) designate responsibility for the placement and care of the child with the probation department; and

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(D) find whether it:

- (i) serves the best interests of the child to be removed; and
- (ii) would be contrary to the health and welfare of the child for the child to remain in the home.

(c) If a dispositional decree under this section:

(1) orders or approves removal of a child from the child's home or awards wardship of the child to a:

- (A) person other than the department; or
- (B) shelter care facility; and

(2) is the first court order in the delinquent child proceeding that authorizes or approves removal of the child from the child's parent, guardian, or custodian;

the court shall include in the decree the appropriate findings and conclusions described in IC 31-37-6-6(f) and IC 31-37-6-6(g).

SECTION 6. IC 31-37-22-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 9. If the juvenile court modifies a disposition under this chapter and orders the juvenile to reside with the juvenile's parent, guardian, or custodian, the juvenile shall be subject to juvenile home detention under IC 31-37-26.**

SECTION 7. IC 31-37-26 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter 26. Juvenile Home Detention

Sec. 1. If a juvenile court orders a juvenile to reside in the home of the juvenile's parent, guardian, or custodian as part of a disposition or after a detention hearing and before a trial, the juvenile is subject to this chapter and IC 35-38-2.5.

Sec. 2. A juvenile court shall issue a juvenile home detention order and contract to:

- (1) each juvenile who is subject to juvenile home detention; and
- (2) each parent, guardian, or custodian with whom the juvenile will reside.

Sec. 3. A juvenile home detention order and contract required under section 2 of this chapter shall set forth all of the restrictions and rules that will apply to the juvenile during the period of home detention, including:

- (1) rules concerning home monitoring devices;
- (2) rules concerning the time of day when the juvenile must be in the residence;
- (3) rules concerning school attendance; and

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(4) any other restrictions.

Sec. 4. (a) A juvenile court may not allow a juvenile to be subject to juvenile home detention unless the juvenile and the parent, guardian, or custodian with whom the juvenile will be living consent to and sign the juvenile home detention order and contract.

(b) A parent, guardian, or custodian who consents to and signs a juvenile home detention order and contract under subsection (a) shall immediately report to the juvenile's probation officer or other individual designated by the juvenile court any violation by the juvenile of the juvenile home detention order and contract of which the parent, guardian, or custodian is aware.

(c) A parent, guardian, or custodian who knowingly or intentionally violates subsection (b) commits:

(1) except as provided in subdivision (2), a Class C misdemeanor; or

(2) in the case of a second or subsequent knowing or intentional violation, a Class A misdemeanor.

(d) A parent, guardian, or custodian who negligently or recklessly violates subsection (b) commits:

(1) except as provided in subdivisions (2) and (3), a Class D infraction;

(2) in the case of a second negligent or reckless violation, a Class C infraction; or

(3) in the case of a third or subsequent negligent or reckless violation, a Class C misdemeanor.

The court entering judgment against a parent, guardian, or custodian under subdivision (2) shall order the parent, guardian, or custodian to perform forty (40) hours of community service. The court entering judgment against a parent, guardian, or custodian under subdivision (3) shall sentence the parent, guardian, or custodian to at least seven (7) days in jail.

SECTION 8. IC 35-38-2.5-2.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 2.8.** As used in this chapter, "juvenile home detention" means home detention for a juvenile ordered by a juvenile court under IC 31-37-26.

SECTION 9. IC 35-38-2.5-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 14.** A juvenile court that orders juvenile home detention shall comply with the requirements of IC 31-37-26.

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